In the Supreme Court

of the United States

OCTOBER TERM, 1962

No. 82

ITALIA SOCIETA PER AZIONI DI NAVIGAZIONE,

Petitioner,

v.

OREGON STEVEDORING COMPANY, INC.,

Respondent.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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April 5, 1963.

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE. 4-63

In the Supreme Court
of the United States

OCTOBER TERM, 1962

No. 876

ITALIA, SOCIETA PER AZIONI DI NAVIGAZIONE,
Petitioner,

v.

OREGON STEVEDORING COMPANY, INC.,
Respondent.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

Respondent's (stevedore's) brief argues that the stevedore was not negligent, and the District Court so found. That is irrelevant. It is conceded and not an issue. The contracting stevedore's liability for indemnity is based upon principles of contract,—not of tort. *Ryan Stevedore Co.* v. *Pan-Atlantic S.S. Co.*, 350 U.S. 124; *Weyerhaeuser S.S. Co.* v. *Nacirema Co.*, 355 U.S. 563.

The stevedore undertook to perform stevedoring

services and to furnish all ordinary gear necessary therefor. The question is not one of negligence, nor the imposition of tort liability without fault. The question is whether the contracting stevedore breaches the implied warranties of the stevedoring contract by furnishing unseaworthy gear.

In this case the shipowner was subjected to liability to an injured longshoreman because the contracting stevedore furnished and brought aboard a piece of defective unseaworthy equipment. Neither the shipowner nor the stevedore were negligent. But it was the stevedore that furnished the defective equipment, and thus created the unseaworthy condition, and imposed the liability on its customer shipowner.

The issue is clearly one of law, and not of fact as respondent would have it appear. The issue is whether the contracting stevedore, as a part of, or in addition to, its implied warranty of workmanlike service, owes the shipowner the implied warranty that equipment furnished by the stevedore and brought aboard the vessel shall be reasonably suitable for its intended use,—in short, seaworthy. (See the issue as stated by the Court of Appeals, Petition for Cert. Appendix p. 13, and in the dissenting opinion, Appendix p. 32.)

Respondent states, "the trial court after hearing the evidence determined that the stevedore had performed with reasonable safety" (Brief in opposition, p. 2, 5). That is not correct. The trial court simply found that the stevedore had used reasonable care and was not negligent. It also found that the stevedore in fact furn-

ished and brought aboard a piece of defective equipment, unfit for the purposes intended. (Tr. of Record, p. 25) Obviously, the stevedore did *not* perform its contract with reasonable safety, when it actually furnished a piece of defective equipment which caused injury to the longshoreman.

Respondent urges that the District Court decided the case upon the interpretation of the stevedore contract. True. But the majority of the Court of Appeals did not pass upon interpretation of the contract.[1]

The Court of Appeals simply held as a matter of law that a contracting stevedore does not warrant seaworthiness of equipment which it furnishes. It holds as between shipowner and stevedore who are both non-negligent, the shipowner must bear the loss, even though it was the stevedore who owns and furnishes and brings aboard the vessel unseaworthy equipment which results in injury and thus imposes liability upon the shipowner. In this, the Court of Appeals for the Ninth Circuit has decided a very important question of law in a manner directly in conflict with the Second Circuit's decision in the *Booth* case. Review by this Court will resolve this conflict.

The petition for certiorari should be granted for the reasons set forth therein.

Respectfully submitted,

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[1] The dissenting opinion held that the contract did not preclude the implied warranty.